IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

Crl.MC.No. 2807 of 2007()

CRIME NO. 39/06 OF THIRUVALLA EXCISE RANGE
CP.91/2007 of JUDL.MAGISTRATE OF FIRST CLASS COURT, THIRUVALLA

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PETITIONER: ACCUSED NO.2 IN C.P. NO.91/2007

ANILKUMAR,S/O. THANGAM, AGED 33,RESIDING
AT POTTUKULATHU CHIRAYIL VEEDU,
KOIPURM,KADAPRA P.O. KUMBANAD.

BY ADV. SRI.AJITH MURALI

RESPONDENTS: COMPLAINANT IN C.P.NO. 91/2007

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. KAMAPPU

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 07/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C. No. 2807 of 2007

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Dated this the 7th day of September, 2007

O R D E R

The petitioner faces indictment in a prosecution under the Kerala Abkari Act. The petitioner was not arrested at the crime stage. Investigation is complete. Final report has been filed. Committal proceedings has been registered. Consequent to the non-appearance of the petitioner, the learned Magistrate has issued a non-bailable warrant against the petitioner.

2. According to the petitioner he is absolutely innocent. His failure/omission to appear earlier was not wilful, but was due to reasons beyond his control. He is willing to surrender before the learned Magistrate and seek bail. He shall co-operate with the Court for the expeditious disposal of the case. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. In these circumstances it is prayed that appropriate directions may be issued to the learned Magistrate to release the petitioner on bail on the date of surrender itself.

3. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decisions in **Sukumari** v. **State of Kerala** (2001 (1) KLT 22) and **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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